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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

No. 499

THE EMIGRANT INDUSTRIAL SAVINGS BANK,  
*Plaintiff-Respondent,*  
*against*

EMIL J. SONDERLICK,  
*Defendant-Petitioner,*

CATHERINE M. TERRIAULT, *et al.,*  
*Defendants.*

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PETITION FOR REHEARING.

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EMIL J. SONDERLICK,  
*Petitioner.*

by JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*



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**PETITION FOR REHEARING.**

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES  
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES:

Your petitioner respectfully prays this Court to reconsider its determination made on November 6, 1944, which denied his petition for a writ of certiorari to the Appellate Division of the Supreme Court of the State of New York, Second Department, to review a judgment of that Court affirming a judgment of foreclosure and sale in favor of the plaintiff-respondent Bank entered on an order summarily striking out the amended answer of the defendant-petitioner. On December 1, 1944, the Chief Justice signed an order extending to December 26, 1944, the time of your petitioner to file a petition for rehearing.

Plaintiff-respondent herein was not entitled to a judgment of foreclosure in view of the situation disclosed by your petitioner. The latter filed an affidavit, amply supported by record and indisputable facts, showing that he

had been deprived of the property through the medium of a void receivership; and that plaintiff acted in collusion with the receiver to create colorable defaults in mortgage interest and taxes, with the result that the foreclosure was commenced and the original void receivership extended to embrace the foreclosure action. The purpose of this course was shown to be an endeavor to enable the receiver to escape liability for his illegal conduct. Certainly the existence of this inequitable conspiracy sufficed to defeat any equitable remedy plaintiff might otherwise have had. In opposition to the charges plaintiff adduced nothing but conclusory affidavits of persons having no knowledge of the facts. It was nowhere denied that the extension of the alleged receivership had its genesis in an attempt to exonerate the receiver from the consequences of his void receivership. Had these issues been resolved adversely to your petitioner after a trial, there might be some merit in respondent's argument. But for the courts below summarily on motion to deprive petitioner of a trial notwithstanding the showing made, constitutes a marked impairment of the elements of due process.

We have no desire to labor the points heretofore made, but it would seem that the entire process whereby your petitioner was ousted from his property was a marked departure from the customary requirements of litigation of this character. Your petitioner was the sole record owner when a receiver of his property was appointed without notice to him in his capacity as such owner. The receiver was appointed in an action to which your petitioner was no party, and the property was not even the subject of the action; indeed, the state Supreme Court held that the property was not involved in the action, in consequence vacating a notice of pendency wrongfully filed. Following the vacating of that notice, the outcome of the action could not lawfully affect the title to the

property (New York Civil Practice Act, Section 121). Therefore, the judgment in that action could not—for the dual reason that the statute forbade and that neither your petitioner nor his privy was party thereto—have any bearing upon your petitioner's title. Notwithstanding all the foregoing incontrovertible facts, respondent was able, through its proceedings taken herein, to cloak with some semblance of legality the void receivership that was the outgrowth of the first action, to act in collusion with the receiver to divest your petitioner of his rights and, finally, to foreclose him without a trial. We venture to say that nowhere in the records of this Court will there be found any situation wherein so little regard has been shown for the orderly processes of law or where they have been so flagrantly abused to extinguish valuable property rights.

Your petitioner felt that this Court, his last recourse, would be loath to sanction the validity of the proceedings which have been invoked to take from him his property. He feels that upon complete review it will be found that they do not measure up to the exacting standards of due process within the meaning of the Constitution.

#### **Conclusion.**

For the foregoing reasons, as well as those previously advanced, your petitioner respectfully urges this Court to reconsider and change the determination heretofore made denying the writ of certiorari, and that it grant such writ to the Appellate Division of the Supreme Court of the State of New York, Second Department, to review the judgment involved.

Respectfully submitted,

JACOB W. FRIEDMAN,  
*Attorney for Defendant-Petitioner.*